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OGC 78-1815
23 March 1978

MEMORANDUM FOR: Office of Legislative Counsel

Pro/Leg

ATTENTION :

FROM :

Assistant General Counsel

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SUBJECT : Review of S. 2579, 95th Congress 2d Session

1. I have reviewed S. 2579, entitled "President's Commission for the Protection of Human Subjects of Biomedical and Behavioral Research Act of 1978."

2. I believe the Agency should raise strong objections to the bill in its present form.

3. The bill clearly does apply to the Agency, as is made clear in Section 1802(b), where the Agency is twice mentioned by name. However, the bill makes very little provision for the issuance of security clearances, or the protection of classified information, and makes no provision for information to be protected pursuant to statute -- intelligence sources and methods.

4. The matter of security clearances is brought up in the bill with respect to the Commission members, [Section 1801(e)], but the language used there, "... each such individual shall receive all department and agency security clearances necessary to assure such individual's access ..." (emphasis added), gives the impression that such clearances are an entitlement. Rather, I think language such as "must be able to qualify for" should be substituted to correct this impression.

5. With the exception of Commission members, no provision is made for security clearances for other personnel associated with the Commission. See Sections 1806(b)(1) - executive director; 1806(b)(2) - other personnel; 1806(b)(3) - experts and consultants.

6. Nor is any provision made for the protection of classified information or information protected pursuant to statute with respect to the various reports to be published by the Commission. See Sections 1802, 1803, 1804, 1805, and 1806.

7. Further, I think the requirement to publish Commission recommendations pertaining to an agency in the Federal Register, entertain public comment thereon, and publish agency reaction to both in the Register [Section 1806(e)] is simply not compatible with the conduct of classified research.

8. Unlike S. 1893, this bill makes no provision whatever for Human Investigation Research Boards. Query whether this means that such boards will simply cease to exist, or whether that function will be transferred elsewhere.

9. In sum, I believe the bill is simply not acceptable to this Agency in its present form. The Agency must either seek to change the provisions discussed, or seek an exemption from the bill.

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